No. 80-686

Supreme Court, U. S.
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IN THE
# SUPREME COURT OF THE UNITED STATES

CRAIG R. MORRISON, *Petitioner*

*v.*

COMMONWEALTH OF PENNSYLVANIA, *Respondent*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA**

## SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Defendant respectfully files this Supplemental Brief in order to call the Court's attention to a recent law review article which was not available at the time of Petitioner's filing of his Petition for Writ of Certiorari.

The question presented for review, i.e. whether an undercover police officer may misrepresent his identity and gain entry to a person's home under the pretense of

conducting lawful business in order to inspect the premises for evidence of criminal activity, is addressed in *Warner, Governmental Deception in Consent Searches,* 34 U. of Miami L.Rev 57, at 92-93 (1979). Therein the author stated:

> "The issue is not purely academic. A major abrogation of the restrictions on governmental deception would undermine the warrant requirement and in many cases obviate the effect of the fourth amendment. If the government is authorized to enter private premises through the use of any ruse, much has been gained for law enforcement. Similarly owing to the general openness with which Americans manage their private premises the government could maintain almost constant interior surveillance of private areas previously protected under the amendment. A greater compromise of the fourth amendment could hardly be envisioned. The mechanics of the system are not difficult to imagine. The economy of this country is heavily geared to the consumption of durable goods and personal services on private premises. With that consumption comes an endless procession of service and delivery personnel. Although the typical American freeholder or lessee does not make prior acquaintance with most commerical people visiting his premises, there is a typical element of unearned trust reposed in them. This trust is prompted, in major part, by the economic interest of providing goods or services in the most expedient manner possible. To this end, commercial underpinnings engender the very trust which could easily be used by the government to maintain surveillance over a given private area. Added to these opportunities of entry are the social calls made every day to individuals in their private premises by persons previously unknown to them. With very little imagination, but some planning and

control, government authorities could employ a host of nonparticipational schemes to gain entry on a repeated basis to practically any private area. Having established a legally permissible vantage point, it would seem senseless for the officials to worry about procuring a neutral magistrate's authorization for a search. A building inspector's or meter man's uniform would be far more convenient than obtaining a search warrant. Besides, search warrants require probable cause; undercover ruses, as in [*U.S. v. White*, 401 U.S. 745 (1971)], do not. Thus, the warrant requirement would be resorted to only for searches and seizures in which undercover work would be physically or economically unfeasible.

The argument countervailing these fears is that the undercover prerogative could not or would not be extended to nonparticipational deceptions. In the first place, the undercover cases concerned only participational guises and were limited strictly to the facts of each case. Therefore, those holdings cannot be used for direct support for nonparticipational deception. In addition, the "very purpose contemplated" rationale in [*U.S. v. Lewis*, 385 U.S. 206 (1966)] and the "colleague" implication in *White* indicate the Court had no intention of extending the undercover prerogative beyond the scope of participational misrepresentation. The object was to allow the police to impersonate drug purchasers and coconspirators, not to impersonate furnace repairmen or travelling salesmen." Id. at 92-93.

## CONCLUSION

For these reasons, a Supplemental Brief in Support of Petition for Writ of Certiorari should issue to review the Judgment and Opinion of the Supreme and Superior Courts of Pennsylvania.

Respectfully submitted,
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## CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 1980, three copies of the Supplemental Brief in Support of Petition for Writ of Certiorari were mailed by first class mail to James Freeman, Esquire, District Attorney of Chester County, Chester County Courthouse, West Chester, Pennsylvania 19380. I further certify that all parties required to be served have been served.

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